

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: Videotape
NEURONTIN MARKETING, SALES : Deposition of:
PRACTICES AND PRODUCTS :
LIABILITY LITIGATION : MICHAEL TRIMBLE
:

THIS DOCUMENT RELATES TO:

Smith, et al. v Pfizer, et al.

Case No. 05-cv-11515-PBS

TRANSCRIPT of testimony as taken by and before PATRICIA A. SANDS, a Shorthand Reporter and Notary Public of the States of New York and New Jersey, at the offices of Lanier Law Firm, 126 East 56th Street, New York, New York, on Tuesday, September 2, 2008, commencing at 9:15 in the forenoon.

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<div>Page 2</div> <div>1 APPEARANCES:</div> <div>2</div> <div>3 FINKELSTEIN & PARTNERS</div> <div>4 436 Robinson Avenue</div> <div>5 Newburgh, New York 12550</div> <div>6 BY: ANDREW G. FINKELSTEIN, ESQ.</div> <div>7 For the Plaintiff</div> <div>8 800 634-1212</div> <div>9</div> <div>10 THE LANIER LAW FIRM</div> <div>11 Tower 56</div> <div>12 126 East 56th Street, 6th Floor</div> <div>13 New York, New York 10022</div> <div>14 BY: KENNETH SOH, ESQ.</div> <div>15 For the Plaintiff</div> <div>16 212 421-2800</div> <div>17</div> <div>18 SHOOK, HARDY & BACON, LLP</div> <div>19 2555 Grand Boulevard</div> <div>20 Kansas City, Missouri 64108-2613</div> <div>21 BY: LORI CONNORS McGRODER, ESQ.</div> <div>22 For the Defendant</div> <div>23 816 474-6550</div> <div>24</div> <div>25 ALSO PRESENT:</div> <div>26 Adam DiCola, Videographer</div>	<div>Page 4</div> <div>1 EXHIBITS, continued.</div> <div>2</div> <div>3 NUMBER DESCRIPTION PAGE</div> <div>4 TRIMBLE</div> <div>5</div> <div>6 Exhibit 10 Expert reports 128</div> <div>7 Exhibit 11 Gabapentin papers 129</div> <div>8 Exhibit 12 Questionnaire 130</div> <div>9 Exhibit 13 Re GABA receptors 132</div> <div>10 Exhibit 14 PubMed article 134</div> <div>11 Exhibit 15 Questionnaire 140</div> <div>12 Exhibit 16 APA Guidelines 214</div> <div>13 Exhibit 17 Cato's medical records 286</div> <div>14 Exhibit 18 McComb's records 311</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>
<div>Page 3</div> <div>1</div> <div>2 INDEX</div> <div>3</div> <div>4 WITNESS DIRECT</div> <div>5 PROFESSOR MICHAEL TRIMBLE</div> <div>6</div> <div>7 Ms. McGroder 6</div> <div>8</div> <div>9 EXHIBITS</div> <div>10</div> <div>11 NUMBER DESCRIPTION PAGE</div> <div>12 TRIMBLE</div> <div>13</div> <div>14 Exhibit 1 Declaration 37</div> <div>15 Exhibit 2 Aid memoir 37</div> <div>16 Exhibit 3 Fromson letter 40</div> <div>17 Exhibit 4 Table 15 & pg 37 of report 89</div> <div>18 Exhibit 5 Table 7.20 95</div> <div>19 Exhibit 6 Graphic 97</div> <div>20 Exhibit 7 Article 112</div> <div>21 Exhibit 8 Literature 113</div> <div>22 Exhibit 9 Notes 117</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 5</div> <div>1 PROF. MICHAEL TRIMBLE,</div> <div>2 Institute of Neurology</div> <div>3 Queen Square</div> <div>4 London WCIN3CB,</div> <div>5 having been sworn, was examined</div> <div>6 and testified as follows:</div> <div>7</div> <div>8 THE VIDEO OPERATOR: Please standby.</div> <div>9 We are on the record. My name is</div> <div>10 Adam DiCola of Veritext Services. The</div> <div>11 date today is September 2, 2008, and the</div> <div>12 time is approximately 9:15 a.m.</div> <div>13 This deposition is being held in the</div> <div>14 office of Lanier Law Firm, located at 126</div> <div>15 East 56th Street, New York, New York.</div> <div>16 The caption of this case is Smith et</div> <div>17 al., versus Pfizer, et al., in the United</div> <div>18 States District Court, District of</div> <div>19 Massachusetts. Case number</div> <div>20 05-cv-11515-PBS.</div> <div>21 The name of the witness is Michael</div> <div>22 Trimble.</div> <div>23 At this time the attorneys will</div> <div>24 identify themselves and the parties they</div> <div>25 represent, after which our court reporter,</div> <div>Patricia Sands, will swear in the witness</div>

2 (Pages 2 to 5)

VERITEXT CORPORATE SERVICES (800) 567-8658

<p style="text-align: right;">Page 6</p> <p>1 and we can proceed.</p> <p>2 MR. FINKELSTEIN: Andrew Finkelstein,</p> <p>3 Finkelstein & Partners, on behalf of the</p> <p>4 Smith family.</p> <p>5 MR. SOH: Ken Soh, from the Lanier</p> <p>6 Law Firm on behalf of the plaintiffs.</p> <p>7 MS. McGRODER: Lori McGroder, of</p> <p>8 Shook, Hardy & Bacon, on behalf of Pfizer.</p> <p>9 MS. STEVENSON: Jennifer Stevenson,</p> <p>10 of Shook, Hardy & Bacon on behalf of</p> <p>11 Pfizer.</p> <p>12 - - -</p> <p>13 Witness sworn</p> <p>14 - - -</p> <p>15 DIRECT EXAMINATION</p> <p>16 BY MS. McGRODER:</p> <p>17 Q Professor Trimble, good morning.</p> <p>18 A Good morning.</p> <p>19 Q We've met before; correct?</p> <p>20 A Twice.</p> <p>21 Q Good to see you.</p> <p>22 A Thanks.</p> <p>23 Q Thanks for being here.</p> <p>24 I understand your opinion in this case to</p> <p>25 be that -- and these are your words not mine:</p>	<p style="text-align: right;">Page 8</p> <p>1 So there's sudden spontaneous events</p> <p>2 that, to a large extent, are unpredicted</p> <p>3 and not perhaps predictable by a third</p> <p>4 person. That was the impulsive part.</p> <p>5 The first part was spontaneous, which</p> <p>6 means happens out of the blue.</p> <p>7 Spontaneous.</p> <p>8 BY MS. McGRODER:</p> <p>9 Q So it's your opinion that Mr. Smith's</p> <p>10 suicide happened out of the blue?</p> <p>11 MR. FINKELSTEIN: Objection.</p> <p>12 THE WITNESS: It is my opinion that</p> <p>13 Mr. Smith's suicide happened out of the</p> <p>14 blue.</p> <p>15 BY MS. McGRODER:</p> <p>16 Q Is there any peer reviewed published</p> <p>17 literature in the world demonstrating that</p> <p>18 Neurontin causes impulsive suicide behavior?</p> <p>19 In other words, suicide that happened out of</p> <p>20 the blue?</p> <p>21 MR. FINKELSTEIN: Objection.</p> <p>22 THE WITNESS: Could you just rephrase</p> <p>23 that, because there were two questions</p> <p>24 embedded into one.</p> <p>25 MS. McGRODER: Well, I don't think</p>
<p style="text-align: right;">Page 7</p> <p>1 "In the absence of a recognizable</p> <p>2 psychiatric disorder, the spontaneous and</p> <p>3 impulsive nature of Richard Smith's suicide</p> <p>4 requires explanation. As outlined in my</p> <p>5 concurrent report, Gabapentin is associated</p> <p>6 with changes of brain chemistry, which I find</p> <p>7 with a reasonable degree of scientific and</p> <p>8 medical probability, leads to impulsive</p> <p>9 suicidal acts. It is, therefore, my opinion</p> <p>10 that it is more likely than not, Gabapentin was</p> <p>11 a substantial factor in Mr. Smith committing</p> <p>12 suicide."</p> <p>13 As we sit here today, do you stand by that</p> <p>14 opinion?</p> <p>15 A I do.</p> <p>16 Q Please define for me what you mean by</p> <p>17 "spontaneous and impulsive" in nature.</p> <p>18 MR. FINKELSTEIN: Objection as to</p> <p>19 form.</p> <p>20 THE WITNESS: If something is</p> <p>21 impulsive, it arises unexpectedly and</p> <p>22 quite quickly. And impulsive acts often</p> <p>23 have disastrous consequences. So, uhm,</p> <p>24 also aggressive acts lead to personal,</p> <p>25 interpersonal damage.</p>	<p style="text-align: right;">Page 9</p> <p>1 so, but sure, I'll --</p> <p>2 THE WITNESS: Well, the one related</p> <p>3 to suicidal behavior, and the other</p> <p>4 related to impulsivity in the same</p> <p>5 sentence.</p> <p>6 BY MS. McGRODER:</p> <p>7 Q Well, is it your opinion that Mr.</p> <p>8 Smith's suicidal behavior was impulsive?</p> <p>9 A Yes.</p> <p>10 Q Okay, so my question is: Is there</p> <p>11 any peer reviewed published literature in the</p> <p>12 world that demonstrates or states that</p> <p>13 Neurontin causes impulsive suicidal behavior?</p> <p>14 A Yes.</p> <p>15 Q And can you please identify for me</p> <p>16 what literature you're referring to?</p> <p>17 A If you look in my report, I cite</p> <p>18 several references that have to do with</p> <p>19 impulsive aggressive behavior in patients</p> <p>20 receiving Gabapentin.</p> <p>21 Q And did those patients commit suicide</p> <p>22 in the literature to which you are referring?</p> <p>23 A Those patients committed aggressive</p> <p>24 acts. I haven't read those reports recently, I</p> <p>25 don't believe they related directly to suicide,</p>

3 (Pages 6 to 9)

1 you're missing.
 2 THE WITNESS: It's a single dose?
 3 This is a single-dose study?
 4 BY MS. McGRODER:
 5 Q Yes, let's talk single dose for now.
 6 A Okay, because that's crucial,
 7 obviously, but I don't know, uhm -- I don't
 8 know if that's even been looked at. It
 9 probably has, but with the short half life, it
 10 probably would clear within 24 hours.
 11 Q Is it not important to your opinion
 12 in the Smith case to know how long it takes for
 13 Neurontin to clear from the system following
 14 the last dose?
 15 A That's a different question, though.
 16 The question as to what happens when you take a
 17 single dose is very different to somebody who
 18 takes multiple doses, because the body becomes
 19 saturated with the product. And if you stop
 20 taking the drug, you will still get the product
 21 emerging from fatty tissue, for example.
 22 So the delay, when you've been taking the
 23 drug chronically, is very different.
 24 Q Okay, let's say you have been taking
 25 Gabapentin for two months.

1 A Okay.
 2 Q And you take your last dose.
 3 A Okay.
 4 Q How long before there is no
 5 appreciable Gabapentin in your system?
 6 A I would say several days, at least.
 7 Q And on what do you base your opinion
 8 that it would be several days at least?
 9 A On what I've just said, that the drug
 10 has to come out of the body tissue, body
 11 system. But that is a guess. As far as I
 12 know, it's not been looked at.
 13 Q What is the point at which the drug
 14 would have no clinical effect following last
 15 ingestion?
 16 A That is a different question again.
 17 Q Yes, that's why I asked it.
 18 A If you have a drug which acts on the
 19 brain and influences brain neurochemistry, you
 20 may well have an effect on the central nervous
 21 system which by far outlasts the effect of the
 22 amount of the blood, of what's in the blood.
 23 So once you have got the blood into the
 24 brain, you're talking again about a different
 25 system to just looking at what comes out when

1 you stop the drug from the blood stream.
 2 Q All right, and so my question is
 3 related to clinical effects. So maybe you
 4 tried to answer my question and I just didn't
 5 understand your answer.
 6 But my question is: How long after your
 7 last ingestion of Gabapentin would you expect
 8 there to be any clinical effect -- let's say,
 9 let's say you're taking Gabapentin for pain
 10 reduction -- how long after your last dose of
 11 Gabapentin would you have clinical, the
 12 clinical effect of pain reduction?
 13 MR. FINKELSTEIN: Objection.
 14 I don't know that there's any
 15 efficacy that it's ever been established
 16 that Gabapentin has any effect --
 17 MS. McGRODER: Objection to form is
 18 fine.
 19 MR. FINKELSTEIN: -- on pain
 20 reduction.
 21 THE WITNESS: I do not know the
 22 literature on the use of Gabapentin in
 23 chronic pain.
 24 BY MS. McGRODER:
 25 Q All right, well, let's talk about an

1 epileptic, then. Do you know the literature on
 2 epilepsy and Gabapentin?
 3 A I do.
 4 Q Okay, so let's assume that somebody's
 5 on Gabapentin for epilepsy, and they take their
 6 last dose.
 7 A Okay.
 8 Q They just decide I'm not taking this
 9 drug anymore.
 10 A Yup.
 11 Q They've taken their last dose.
 12 How long after the last dose will the
 13 person no longer have seizure control, or have
 14 the clinical benefit of the drug?
 15 A As far as I'm aware, if you stop
 16 Gabapentin, you do not get a rebound of
 17 seizures, withdrawal seizures.
 18 What you do get with some other
 19 anti-epileptic drugs -- the point of that is to
 20 say that the lingering anti-epileptic effect
 21 must go on several days.
 22 Q And is there any literature that
 23 supports your opinion that there is lingering
 24 effect that goes on for several days?
 25 A Well, I have not read a literature

1 that suggests rebound seizures when you stop --
 2 I'm sorry -- I have not read a literature that
 3 suggests withdrawal seizures on Gabapentin, and
 4 I have not read a literature on psychological
 5 effects, if I could put it like that. In other
 6 words, like benzodiazepine withdrawal syndrome,
 7 which, again, suggests that it is cleared
 8 slowly rather than very rapidly from the brain.

9 Q And so you're relying on literature
 10 that addresses the lack of rebound seizures to
 11 support an opinion that the clinical effects of
 12 Neurontin would there be for several days?

13 MR. FINKELSTEIN: Objection.

14 THE WITNESS: Correct, yes. Yes,
 15 correct.

16 BY MS. McGRODER

17 Q At least in an epileptic population?

18 A In an epilepsy population; correct.

19 Q Other than that, do you have any
 20 basis for your statement that the clinical
 21 effects would last for several days following
 22 your last ingestion of Gabapentin?

23 A Only that that is a general effect of
 24 drugs that affect the central nervous system,
 25 that they tend to last, outlast the blood

1 twice a day. And at some point it was
 2 increased to 300 milligrams three times a
 3 day.

4 BY MS. McGRODER:

5 Q So is the maximum does that Mr. Smith
 6 ever ingested 900 milligrams per day?

7 A 900 milligrams a day.

8 Q Did he, in fact, take Neurontin three
 9 times a day at 300 milligrams?

10 A My understanding is, from the
 11 depositions, that that was, indeed, the case.

12 Q And what depositions are you relying
 13 on for your understanding that he, in fact,
 14 ingested Neurontin three times a day?

15 A The family, depositions particularly,
 16 I suppose Ruth Smith, but also if I remember
 17 from what I read yesterday, there was some
 18 other family members. His daughters, I don't
 19 know which one it was, would say that he was a
 20 reliable patient who took medications
 21 prescribed.

22 Q Did any family member actually
 23 observe, personally observe Mr. Smith take
 24 Neurontin ever?

25 A I cannot answer that question.

1 levels.

2 Q When did Mr. Smith take his first
 3 dose of Gabapentin?

4 A Well, we've already discussed that
 5 was in my report. Let me go back to the dates.
 6 (Reviewing document.) I want to get the dates
 7 in correct. My belief it was the 9th of March.
 8 The 9th or March 2004.

9 Q And when did he take his last dose?

10 A That I do not know.

11 Q And why do you not know when he took
 12 his last dose?

13 A Because he -- well, I don't know. I
 14 have no idea when he took his last dose.

15 Q Is there any information in the
 16 record, based on your review, that indicates
 17 when Mr. Smith took his last dose of Neurontin?

18 A No.

19 Q What dose of Neurontin did Mr. Smith
 20 take?

21 MR. FINKELSTEIN: When?

22 MS. McGRODER: You can tell me if
 23 it's different every time.

24 THE WITNESS: It appears that he was
 25 started on that date on 300 milligrams

1 Q You cannot answer because you don't
 2 know?

3 A It's not within the depositions, I
 4 don't believe. I don't know is the answer.

5 Q So your testimony is that none of the
 6 family members have testified to whether they
 7 personally observed Mr. Smith taking
 8 Gabapentin?

9 A I would like to be slightly cautious,
 10 because I read a large number of depositions
 11 yesterday and I read them in the past, and I
 12 may be incorrect, but I do not know of any
 13 deposition which has said that Mr. Smith was
 14 observed three times a day taking his
 15 medication, by any family member.

16 Q Well, you read Mrs. Smith's
 17 deposition a while ago, before you offered your
 18 report; correct?

19 A That's correct.

20 Q The rest of the depositions you just
 21 read yesterday; right? That's the testimony
 22 you gave.

23 A Yes.

24 Q Well, did you reread them, or did you
 25 read them for the first time yesterday?

<p style="text-align: right;">Page 266</p> <p>1 A Well, I read them for the first time</p> <p>2 yesterday.</p> <p>3 Q Right. And in those depositions you</p> <p>4 did you not find any testimony of the family</p> <p>5 members wherein they stated I did not</p> <p>6 personally observe Mr. Smith take Neurontin,</p> <p>7 you didn't see that in those depositions you</p> <p>8 read yesterday?</p> <p>9 MR. FINKELSTEIN: Objection.</p> <p>10 THE WITNESS: I did not observe or I</p> <p>11 did observe?</p> <p>12 BY MS. McGRODER:</p> <p>13 Q Did not. Do you want me to restate</p> <p>14 the question?</p> <p>15 A I think so.</p> <p>16 Q In the depositions that you read</p> <p>17 yesterday and in the Ruth Smith deposition that</p> <p>18 you read a year ago, you didn't find any</p> <p>19 references to family members giving testimony</p> <p>20 that they did not personally observe Mr. Smith</p> <p>21 take Neurontin?</p> <p>22 MR. FINKELSTEIN: Objection.</p> <p>23 THE WITNESS: They did not personally</p> <p>24 observe -- I don't recall any family</p> <p>25 member saying they did not observe</p>	<p style="text-align: right;">Page 268</p> <p>1 potential factor.</p> <p>2 Q That's your opinion?</p> <p>3 A Uh hum.</p> <p>4 Q Which is fine. I'm talking about</p> <p>5 evidence in the record that he actually</p> <p>6 ingested Neurontin. And we've talked about</p> <p>7 Mr. Smith's deposition, we've talked about</p> <p>8 statements that Mr. Smith made, and that</p> <p>9 Neurontin was in the home; correct?</p> <p>10 A Correct.</p> <p>11 Q Anything else?</p> <p>12 A Not that I read in the depositions,</p> <p>13 no.</p> <p>14 Q What was Mr. Smith's Gabapentin level</p> <p>15 at the time of his suicide?</p> <p>16 A Sadly -- well, not sadly. The</p> <p>17 autopsy never included any biochemical</p> <p>18 analysis.</p> <p>19 Q Well, he didn't have an autopsy; did</p> <p>20 he?</p> <p>21 A Okay, I'm sorry. Blood was not taken</p> <p>22 to look to see what -- well, they didn't</p> <p>23 measure -- actually it was taken, blood was</p> <p>24 taken, but they didn't measure Gabapentin.</p> <p>25 Q Other than a post-mortem blood</p>
<p style="text-align: right;">Page 267</p> <p>1 Mr. Smith taking Neurontin.</p> <p>2 BY MS. McGRODER:</p> <p>3 Q Okay, so the evidence that you have</p> <p>4 that Neurontin was, in fact, ingested by</p> <p>5 Mr. Smith comes from Ruth Smith's deposition</p> <p>6 testimony?</p> <p>7 A And his own words, of course.</p> <p>8 Mr. Smith's own words.</p> <p>9 Q Okay, and what else? Anything else?</p> <p>10 A The fact that he had the medication,</p> <p>11 not strong evidence, but he had the medication</p> <p>12 at his home. And, well, his own words.</p> <p>13 Q Anything else? I just want to make</p> <p>14 sure we've talked about everything that you</p> <p>15 believe supports your opinion that he took</p> <p>16 Neurontin.</p> <p>17 A Well, there is also the fact that he</p> <p>18 underwent a mental state change, which needs to</p> <p>19 be explained -- well, after he went on to the</p> <p>20 Gabapentin, which we know ultimately led to his</p> <p>21 suicide, so the mental state change, as a</p> <p>22 behavioral neurologist, leads me to ask the</p> <p>23 questions: What was the trigger factor that</p> <p>24 lead to these events? And the alteration of</p> <p>25 his mental state has to be included as the</p>	<p style="text-align: right;">Page 269</p> <p>1 screen -- well, let me articulate it</p> <p>2 differently.</p> <p>3 Setting aside a post-mortem blood screen</p> <p>4 that doesn't identify Gabapentin -- well,</p> <p>5 withdrawn.</p> <p>6 It's true that you have no evidence as you</p> <p>7 sit here today that Mr. Smith had Gabapentin in</p> <p>8 his body at the time of his suicide?</p> <p>9 MR. FINKELSTEIN: Objection.</p> <p>10 THE WITNESS: There is no evidence</p> <p>11 that Mr. Smith had Gabapentin inside his</p> <p>12 body in terms of biochemical evidence,</p> <p>13 that is correct.</p> <p>14 BY MS. McGRODER:</p> <p>15 Q What was Mr. Smith's active serotonin</p> <p>16 level at the time of his suicide?</p> <p>17 A I really am not even going to</p> <p>18 counsel -- I'm not going to counsel even</p> <p>19 answering that question.</p> <p>20 Q You don't know?</p> <p>21 A Of course I don't know.</p> <p>22 Q You don't know if he had an increased</p> <p>23 serotonin level or a decreased serotonin level</p> <p>24 at the time of his suicide; do you?</p> <p>25 A Of course not.</p>

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TRANSCRIPT of testimony as taken by and before PATRICIA A. SANDS, a Shorthand Reporter and Notary Public of the States of New York and New Jersey, at the offices of Lanier Law Firm, 126 East 56th Street, New York, New York, on Wednesday, September 3, 2008, commencing at 9:16 in the forenoon.

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25 ALSO PRESENT:
Adam DiCola, Videographer

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1 PROF. MICHAEL TRIMBLE,
2 Institute of Neurology
3 Queen Square
4 London WCIN3CB,
5 having been previously sworn, was
6 examined and testified as follows:
7
8 THE VIDEO OPERATOR: Please standby.
9 We are on the record. My name is
10 Adam DiCola of Veritext Corporate
11 Services. The date today is September 3,
12 2008, and the time is approximately
13 9:16 a.m. This deposition is being held
14 in the office of Lanier Law Firm, located
15 at 126 East 56th Street, New York, New
16 York.
17 The caption of this case is Smith, et
18 al., versus Pfizer, et al., in the United
19 States District Court, District of
20 Massachusetts, Case Number
21 05-CV-11515-PBS.
22 The name of the witness is Professor
23 Michael Trimble.
24 At this time the attorneys will
25 identify themselves and the parties they
represent, after which our court reporter,
Patricia Sands, will swear in the witness

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1 and we can proceed.
2 MR. FINKELSTEIN: Andrew Finkelstein,
3 on behalf of the Smith family.
4 MR. SOH: Ken Soh, on behalf of the
5 Smith family as well.
6 MS. McGRODER: Lori McGroder, of
7 Shook, Hardy & Bacon, on behalf of Pfizer.
8 MS. STEVENSON: Jennifer Stevenson,
9 of Shook, Hardy & Bacon, also on behalf of
10 Pfizer.
11 THE WITNESS: We did this yesterday.
12
13 CONTINUED DIRECT EXAMINATION
14 BY MS. McGRODER:
15 Q Professor Trimble, you know you're
16 still under oath; correct?
17 A Correct.
18 Q Did you do anything last night to
19 prepare for the continuation of your deposition
20 this morning?
21 A Last night and this morning I read
22 through my bundle of Mr. Smith's notes.
23 Q And those would be the medical
24 records marked as Exhibit --
25 A The ones that you had yesterday.

1 Q The ones that you brought with you;
 2 correct?
 3 A Correct.
 4 Q I think those were marked as
 5 Exhibit 12?
 6 A Correct.
 7 Q And what of interest did you find in
 8 the medical records that you brought with you?
 9 A I was really refreshing my memories
 10 of the notes. I searched in vain for the
 11 script that you kindly showed me yesterday,
 12 which revealed that he had been on
 13 escitalopram, which I had not seen before. And
 14 I -- it gave me some comfort.
 15 Q Did you review that same set of
 16 medical records before your deposition
 17 testimony yesterday?
 18 A Correct.
 19 Q And then you reviewed them again this
 20 morning or last night?
 21 A Well, both.
 22 Q Okay. What else did you do to
 23 prepare for your deposition today?
 24 A Tried to relax, really. I don't
 25 think I did anything. I didn't do any extra

1 A I was thinking it might be Mr. Hooper
 2 again.
 3 Q Were you disappointed?
 4 A Not at all. Not at all. I don't
 5 think we discussed anything in specifics, but I
 6 was given that large bundle of depositions to
 7 read. And that really consumed the rest of my
 8 day.
 9 Q What --
 10 A But I don't think it was specific in
 11 terms of preparing for a deposition. I mean,
 12 this is the fourth deposition I've done, so I
 13 know what to expect.
 14 Q Sure.
 15 A And so there was nothing specific.
 16 And as far as I know, there was no new
 17 information that had been brought forward in
 18 this case, except that bundle of depositions
 19 which you had, which I then took away and spent
 20 the rest of the afternoon reading.
 21 Q Right. And my question really wasn't
 22 limited to your preparation for how to give a
 23 deposition, it was what did you do to prepare
 24 to give a deposition in the Smith matter.
 25 So what did you discuss with respect to

1 reading or anything like that.
 2 Q How much time did you spend meeting
 3 with lawyers for the plaintiffs in preparation
 4 for your deposition?
 5 A Between today and yesterday?
 6 Q No, ever.
 7 A This deposition?
 8 Q Yes, of course.
 9 A I arrived here Sunday, and I was with
 10 Mr. Soh and Mr. Finkelstein for -- I can't
 11 remember, but it was a holiday, so I guess it
 12 was about three hours in the morning maybe.
 13 Q On Monday the holiday?
 14 A Monday the holiday, yes.
 15 Q Okay.
 16 A I think people were anxious to get
 17 away for the holiday.
 18 Q Is that the full extent of meetings
 19 that you had with lawyers to prepare for your
 20 deposition?
 21 A This deposition, that's correct.
 22 Q Okay. And what did you discuss on
 23 Monday?
 24 A Who was going to do this deposition.
 25 Q What was the speculation?

1 the Smith case?
 2 A I don't think we discussed anything
 3 specific, you know, in terms of was there any
 4 alteration in my opinion or if anything new
 5 cropped up. I don't think that there was
 6 anything like that.
 7 Q Well, generally what did you talk
 8 about in the Smith case? You did talk about
 9 the Smith case; correct? I mean, you're here
 10 to give a deposition about the Smith case.
 11 A If I recall rightly, that we spent
 12 quite some time talking about FDA hearing. And
 13 Mr. Finkelstein -- I had, of course, read it,
 14 but Mr. Finkelstein had the DVD. And he showed
 15 me some excerpts from that, because I was
 16 interested, actually.
 17 And, ah, we discussed the fact that
 18 Dr. Katz referred to the causal link between
 19 taking these antiepileptic compounds and
 20 suicide. And there was some other snippets
 21 that he also showed me in relationship to that.
 22 But I don't -- I don't think there was
 23 anything particular about the Smith case in
 24 itself.
 25 Q Well, just generally then, what did

<p style="text-align: right;">Page 357</p> <p>1 BY MS. MCGRODER:</p> <p>2 Q And you see at the end of this note</p> <p>3 that Dr. Shell concludes that his pain may be</p> <p>4 coming from his back; correct?</p> <p>5 A Correct.</p> <p>6 Q And that he might benefit from a</p> <p>7 second opinion and, thus, Dr. Shell recommends</p> <p>8 that he see Dr. Mackey; correct?</p> <p>9 A That's correct.</p> <p>10 Q Doctor Mackey is a surgeon; right?</p> <p>11 Do you know?</p> <p>12 A I understand that he is, but I can't</p> <p>13 guarantee that.</p> <p>14 Q So if you turn the page to TOA 004.</p> <p>15 A Yes.</p> <p>16 Q Mr. Smith is back in the office on</p> <p>17 February 12 for a visit with Dr. Mackey;</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q And the record says: "He is status</p> <p>21 post lumbar laminectomy and fusion, using what</p> <p>22 appears to be local bone. Last fall he began</p> <p>23 to have increasing left lower extremity pain."</p> <p>24 Do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 359</p> <p>1 has not improved despite muscle relaxants and</p> <p>2 pain medication; correct?</p> <p>3 A That is correct.</p> <p>4 Q And the muscle relaxants and pain</p> <p>5 medication that he was on, according to the</p> <p>6 preceding note, include Dextra and Flexeril;</p> <p>7 right?</p> <p>8 A Correct.</p> <p>9 Q Would you agree with me that despite</p> <p>10 conservative pain therapy at this point,</p> <p>11 Mr. Smith's pain was not improving?</p> <p>12 A That's correct.</p> <p>13 Q Would you agree with me that the fact</p> <p>14 that conservative therapy is not improving his</p> <p>15 pain at this point, is similar to the</p> <p>16 circumstances in 2003, where he tried</p> <p>17 conservative therapy before he received surgery</p> <p>18 for his back pain?</p> <p>19 A I agree the situation is very</p> <p>20 similar.</p> <p>21 Q If you will go to page TOA 00015,</p> <p>22 it's about two pages back.</p> <p>23 A I have that.</p> <p>24 Q This is a February 17, 2004 plan of</p> <p>25 care.</p>
<p style="text-align: right;">Page 358</p> <p>1 Q "He denies any weakness. The pain</p> <p>2 has not improved despite muscle relaxants and</p> <p>3 pain medication."</p> <p>4 Correct?</p> <p>5 A Correct.</p> <p>6 Q So he's reporting the same symptoms</p> <p>7 to Dr. Mackey; right?</p> <p>8 A With the exception of the razor</p> <p>9 blades.</p> <p>10 Q Right. But he just says the pain has</p> <p>11 not improved, so presumably it's the same pain?</p> <p>12 A I don't think you could presume that.</p> <p>13 Q You don't?</p> <p>14 A No.</p> <p>15 Q Well, the pain he reported on the</p> <p>16 preceding visit to this same office was that he</p> <p>17 had pain that felt like razor blades; right?</p> <p>18 A He does not state that in this report</p> <p>19 that you just showed me.</p> <p>20 Q Okay, but my question is: The pain</p> <p>21 that he reports on the preceding visit to this</p> <p>22 same office is pain that felt like razor</p> <p>23 blades; correct?</p> <p>24 A That is correct.</p> <p>25 Q Okay. And this note says that pain</p>	<p style="text-align: right;">Page 360</p> <p>1 A Yes, I have that.</p> <p>2 Q Do you see that?</p> <p>3 A I have that.</p> <p>4 Q And do you see under the "Problems &</p> <p>5 Goals" under problem number 1, it says: "Chief</p> <p>6 complaint: Pain. Aggravating factors:</p> <p>7 Activities Walking 0 to 10 minutes."</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Does that tell us that Mr. Smith had</p> <p>11 pain with activities such as walking 10 minutes</p> <p>12 or less?</p> <p>13 A That's correct.</p> <p>14 Q Okay. And if you will look at</p> <p>15 problem number 2, it says: "Chief complaint:</p> <p>16 Pain. Current Severity: 7 out of 10."</p> <p>17 A Correct.</p> <p>18 Q Right?</p> <p>19 A That's correct.</p> <p>20 Q And so thinking back to the spring of</p> <p>21 2003, before he had lumbar laminectomy surgery,</p> <p>22 he rated his pain 8 on a scale of 1 to 10. Do</p> <p>23 you recall that?</p> <p>24 A Yes.</p> <p>25 Q And here he is rating his pain 7 on a</p>

1 surgery and he can't have surgery?
 2 MR. FINKELSTEIN: Objection.
 3 THE WITNESS: According to
 4 Dr. Mackey, that is correct.
 5 BY MS. McGRODER:
 6 Q And Dr. McCombs?
 7 A Yes, and McCombs, that is correct.
 8 Q Did you consider the fact that
 9 Mr. Smith was no longer a candidate for surgery
 10 to help his pain in 2004 when you formed your
 11 opinions in this case?
 12 A My understanding is that he was
 13 actually scheduled to see yet another surgeon
 14 the day after he died, Dr. Chang, I think it
 15 was. So his searching for another opinion had
 16 not ceased.
 17 Q Okay. That wasn't my question. My
 18 question was: Did you consider the fact that
 19 Mr. Smith was told by two surgeons in March
 20 of 2004 that he was no longer a candidate for
 21 surgery to help him with his pain when you
 22 formed the opinions that you came to in this
 23 case?
 24 A Not especially, no.
 25 Q That wasn't important to your

1 opinion?
 2 MR. FINKELSTEIN: Objection.
 3 THE WITNESS: Not especially, no.
 4 BY MS. McGRODER:
 5 Q Okay, if you go to Exhibit 15, page
 6 FMB 52, which is an April 15, 2004 note.
 7 A Right.
 8 Q Let me give you the actual exhibit.
 9 Here, use this.
 10 A Yeah. I'll give you that back.
 11 Q These are the medical records of
 12 Dr. Berklacich.
 13 A Right.
 14 Q I'm sure we're butchering that name,
 15 but that's the best I can do.
 16 A Okay.
 17 Q And look for April 15, 2004.
 18 MR. FINKLESTEIN: What's the Bates
 19 number?
 20 MS. McGRODER: It is FMB 52, actually
 21 it's the last page.
 22 THE WITNESS: Oh, the very bottom.
 23 BY MS. McGRODER:
 24 Q Yes.
 25 A 15 4 04, yes.

1 Q Yes, April 15, 2004. The note says:
 2 "Per Dr. Berklacich, do not --"
 3 A Reschedule.
 4 Q "-- reschedule appointment".
 5 A Yes.
 6 Q Do you know what that's about?
 7 A No.
 8 Q If you -- did you read the deposition
 9 of Dr. Berklacich?
 10 A Yes.
 11 Q Did you take any notes other than the
 12 notes in Exhibit 2 on the basis of your review
 13 of depositions?
 14 A No.
 15 Q Did you make notes in the depositions
 16 themselves?
 17 A No.
 18 (Exhibit 20 marked for
 19 identification.)
 20 Q I'm going to hand you now, Professor
 21 Trimble, what we're marking as Exhibit 20 to
 22 your deposition.
 23 A Okay.
 24 Q If you would look the third to the
 25 last page.

1 MR. FINKLESTEIN: Just so --
 2 MS. McGRODER: I'm getting there.
 3 MR. FINKELSTEIN: I mean, all I want
 4 you to do is establish it was already an
 5 exhibit. That's all.
 6 BY MS. McGRODER:
 7 Q These are records of Neurosurgical
 8 Associates. Do you see that?
 9 A I do.
 10 Q And there is an exhibit reference at
 11 the top on the front page that says Exhibit 1,
 12 if you look on the very front.
 13 A Yes.
 14 Q And that exhibit reference does not
 15 relate to this deposition?
 16 A Okay.
 17 Q Just for the record, that relates to
 18 the deposition of Ruth Smith where this exhibit
 19 was used.
 20 A Okay.
 21 Q Okay. And turning to the third to
 22 the last page, you will see that this is a copy
 23 of Dr. McCombs record.
 24 A Yes. Yes, I have that.
 25 Q Okay.

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1 A We discuss discussed this already.
 2 Q Yes, yes, we did.
 3 A Yes.
 4 Q And this copy has handwriting on it?
 5 A Yes.
 6 Q That we've been told is Mr. Smith's
 7 handwriting; right?
 8 A Correct.
 9 Q And we talked about that a little
 10 yesterday, do you recall?
 11 A Correct.
 12 Q That there was some medical records,
 13 and I think you your testimony you don't know
 14 why Mr. Smith got his medical records or wrote
 15 on them?
 16 A Correct.
 17 Q And in this record, it says -- there
 18 is a circle around the word Dr. Howell.
 19 A Correct.
 20 Q And then there is an arrow that goes
 21 down to the handwritten note.
 22 A That's correct.
 23 Q By Mr. Smith. And the note says,
 24 which is consistent with your testimony, "I
 25 have never seen Dr. Howell"; right?

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1 A That's correct.
 2 Q And then it says: "Dr. Mackey called
 3 and said that Dr. Howell would not see me,
 4 because I had seen Dr. Hampf, February 27th,
 5 2003, and did not let him do my surgery".
 6 Do you see that?
 7 A Yes, I do.
 8 Q And then the next note is: "I pray
 9 that Dr. Hampf will consider seeing me and
 10 giving me his opinion".
 11 Do you see that?
 12 A That's correct.
 13 Q Did you know that Dr. Hampf was
 14 affiliated with Dr. Berklacich?
 15 A No.
 16 Q Dr. Hampf is Dr. Berklacich's
 17 partner, did you know that?
 18 A I didn't know that.
 19 Q So looking back now to Exhibit 15, on
 20 the last page. The record that we were looking
 21 at that says --
 22 A Yes.
 23 Q "Do not reschedule an appointment".
 24 A Yes.
 25 Q Are you aware that refers to

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1 Dr. Hampf and Dr. Berklacich stating in the
 2 record they will not reschedule an appointment
 3 with Mr. Smith?
 4 A That's correct.
 5 Q Do you know what Mr. Smith's reaction
 6 was to that?
 7 A No.
 8 Q Based on the handwritten note of
 9 Mr. Smith, do you think he wanted to see
 10 Dr. Hampf?
 11 MR. FINKELSTEIN: Objection.
 12 THE WITNESS: He was seeking more, he
 13 was still seeking more opinions and he
 14 does discuss Dr. Hampf in that handwritten
 15 note.
 16 BY MS. MCGRODER:
 17 Q And Dr. Hampf is a surgeon; right?
 18 A I do not know. I accept that he may
 19 be, but I do not know.
 20 Q Okay. And this also is different
 21 from Mr. Smith's experience in the spring of
 22 2003; correct?
 23 A In the sense that --
 24 Q In the sense that in 2003 Mr. Smith
 25 did have the opportunity to go and see

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1 Dr. Berklacich and Dr. Hampf to get an opinion
 2 about surgery; right?
 3 A That's correct.
 4 Q Now, in 2004, Mr. Smith is still
 5 experiencing severe pain, and he does not have
 6 the opportunity to go in and see Dr. Hampf and
 7 Dr. Berklacich for an opinion about surgery;
 8 correct?
 9 MR. FINKELSTEIN: Objection.
 10 THE WITNESS: That's correct.
 11 MS. MCGRODER: We are now marking,
 12 Professor Trimble, notes from the
 13 University Medical Center as Exhibit 21.
 14 (Exhibit 21 marked for
 15 identification.)
 16 BY MS. MCGRODER:
 17 Q Do you recognize these notes?
 18 A (Referring to document.) They have a
 19 familiarity.
 20 Q Do you think you have seen these
 21 before?
 22 A I only said that because there's a
 23 lot of them look the same.
 24 Q Format?
 25 A If you would like to take me to the

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1 Mr. Smith's ability to self manage his pain, or
 2 cope with his pain?
 3 A Well, it tells me that he is moving
 4 in the right direction and getting better. If
 5 I could refer back.
 6 Q Well, this is talking about how he
 7 felt after today's treatment in terms of his
 8 pain; right?
 9 A And it says that he's mobilizing
 10 better.
 11 Q Where does it say that?
 12 A Didn't we just read that?
 13 Q Well, after ROM mobility, what does
 14 that say?
 15 A I thought this said that his mobility
 16 was --
 17 Q I simply don't know.
 18 A Increased -- there is an arrow which
 19 says increased.
 20 Q I see that.
 21 A And then "mobility noted".
 22 Q What is the word after "increased"?
 23 A I think it says "dressing".
 24 Q Increased dressing?
 25 A Could be.

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1 Q Mobility noted? So he might be able
 2 to dress himself after this physical therapy
 3 treatment?
 4 A That suggests to me that he is moving
 5 forwards and getting better.
 6 Q Now, my question to you, before you
 7 move on is: Is there anything on UMC 082 that
 8 talks about Mr. Smith's ability to cope with
 9 his pain?
 10 A Well, may I just --
 11 Q First you need to answer my question
 12 about UMC 082, then you can talk about what you
 13 want to talk about, but first answer my
 14 question.
 15 A There's nothing about coping there.
 16 Q Okay.
 17 A But I'm just looking for the word
 18 "coping" in the reference that you previously
 19 showed me.
 20 Q Well, we already discussed what HEP
 21 stood for; right?
 22 A Well, it's help; isn't it? But I
 23 don't see the word "coping" on that page.
 24 Q Okay.
 25 A That's what I'm saying.

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1 Q Okay, that's my question. So this
 2 page, UMC 082, doesn't address -- well, first
 3 it doesn't say that Mr. Smith is not having
 4 pain; right?
 5 It just says his pain has improved after
 6 this physical therapy treatment?
 7 A Correct.
 8 Q And secondly, it doesn't say anything
 9 about his ability to cope with his pain;
 10 correct?
 11 A That is correct. That is correct.
 12 Q Anything else?
 13 A Thirtieth of April. Fourth of May,
 14 Pain Center physiotherapy services.
 15 MS. McGRODER: Professor Trimble,
 16 before we discuss this record we are about
 17 to run out of videotape.
 18 THE WITNESS: Okay.
 19 MS. McGRODER: Let's just take a
 20 short break.
 21 MR. FINKELSTEIN: We're running an
 22 hour and fifteen, why don't we just take a
 23 break?
 24 MS. McGRODER: Perfect.
 25 THE VIDEO OPERATOR: Please standby.

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1 We are going off the record, the time
 2 is 10:37 a.m. This concludes videotape
 3 number 1.
 4 (Recess.)
 5 THE VIDEO OPERATOR: Please standby.
 6 We are back on the record, the time
 7 is 10:59 a.m. This is the beginning of
 8 tape number 2.
 9 BY MS. McGRODER:
 10 Q Professor Trimble, we left off
 11 talking about the physical therapy records from
 12 the University Medical Center in Exhibit 21.
 13 Were you able to find any record among
 14 this set that states Mr. Smith did not -- that
 15 states Mr. Smith was coping well with his pain?
 16 A Well, the word "coping" does not
 17 appear in any of these records.
 18 Q Okay. If I could turn your attention
 19 to UMC 0076.
 20 A (Referring to document.)
 21 Q That would be about three pages from
 22 the back. You know what, use the exhibit, if
 23 you don't mind.
 24 A Yes.
 25 Q That might be easier.

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1 A Yes.
 2 Q Use this one. And using your set of
 3 records.
 4 A Sorry, which was this number?
 5 Q 0076 -- no, I'm sorry, 076.
 6 A Yes.
 7 Q This record is dated May 4, 2004.
 8 A Yes.
 9 Q And at the top right, you see that
 10 there is a pain scale there of 0 to 10?
 11 A That's correct.
 12 Q And 7-8 says "excruciating"; right?
 13 A Yes.
 14 Q And 7-8 on the pain scale is checked
 15 marked; correct?
 16 A That's correct.
 17 Q Okay, so the assessment of Mr. Smith
 18 on May 4, 2004 is excruciating pain?
 19 A That's correct.
 20 Q And the quality of his pain is
 21 checked as sharp; right?
 22 A Correct.
 23 Q And then there is an arrow that says
 24 "down to knee".
 25 A Correct.

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1 Q And if you look at the little diagram
 2 of the human body to the left, it says "knees
 3 and ankles hurt left and right".
 4 A That's correct.
 5 Q You know what, maybe that's left is
 6 greater than right?
 7 A It's probably left greater than
 8 right, yes.
 9 Q In any event, they apparently both
 10 hurt?
 11 A That's correct.
 12 Q And then on other -- it appears to
 13 say doing backbends?
 14 A That's correct.
 15 Q Okay. And then it says: "No
 16 triangle in pain". That triangle means change;
 17 correct?
 18 A I take this to mean that he gets no
 19 change in his pain when he does backbends.
 20 Q Right. And would that be the pain
 21 that's reported as excruciating in the box on
 22 the upper right?
 23 A Yes.
 24 Q Okay.
 25 A Well, I accept that's probably right.

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1 Q Okay. And if you turn two more
 2 pages.
 3 A Well, can we finish that notation?
 4 "Felt good."
 5 Q Right, "after last visit".
 6 A "After last visit".
 7 Q Difficult to sleep.
 8 A Difficulty to sleep.
 9 Q Okay, anything else you want to talk
 10 about on that?
 11 A Not on that page.
 12 Q All right. Then let's turn to
 13 page 74, go two more pages.
 14 A (Referring to document.) This is
 15 moving on a bit in time.
 16 Q Yes, it is. And we'll come back and
 17 fill in the blanks, but on this physical
 18 therapy note, this is actually two days later,
 19 it's dated May 6, 2004?
 20 A Uhm hum.
 21 Q And it says "no change in pain";
 22 right?
 23 A Correct.
 24 Q So we can assume that since he was
 25 seen on May 4, and now it's two days later on

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1 May 6th and the note says "no change in pain"
 2 that Mr. Smith is still experiencing
 3 excruciating pain?
 4 A That's one interpretation. The other
 5 interpretation is that his pain had been
 6 getting better because of what we have just
 7 read. His flexibility was getting better.
 8 And that he was, if we look at page 00077,
 9 "Pain tolerated by today's treatment good".
 10 His irritation is said to be moderate. His
 11 mobility is said to be increasing with increase
 12 lumbar extension noted. Pelvic alignment good.
 13 And his strength and endurance, I read that as
 14 good, but it's a little unclear what it is.
 15 Q I read that as down arrow apostrophe
 16 D, decreased?
 17 A I don't read it as that. I don't see
 18 an arrow.
 19 Q You don't see that first line as an
 20 arrow pointing down?
 21 A No.
 22 Q Well, it certainly doesn't say the
 23 word "good"?
 24 A You see, I accept -- well, I think
 25 we'll have to accept an ambiguity. The other

1 are filling out the discharge summary. And
2 it's dated 6/30, but this reports the same
3 thing as we just read in the May 6, 2004 note;
4 correct?

5 A I will accept that.

6 Q And then it says under "Comments:
7 Patient voiced concern that something serious
8 is going on". Do you see that?

9 A Yes.

10 Q He's going to another neurologist;
11 right?

12 A Correct.

13 Q Mr. Smith was concerned at some point
14 after May 6, 2004 when he asked to be
15 discharged and before his death, that something
16 very serious was going on. You don't disagree
17 with that; right?

18 MR. FINKELSTEIN: Objection.

19 THE WITNESS: By this point in time
20 he was taking Neurontin.

21 BY MS. MCGRODER:

22 Q And this note doesn't say anything
23 about Neurontin; does it?

24 A At this point in time he was taking
25 Neurontin.

1 A Okay.

2 Q Do you have Exhibit 18 in front of
3 you?

4 A No, I don't think --

5 Q (Referring to documents.) There you
6 go.

7 A Thank you. (Referring to document.)

8 Q Now, if you will turn to page 006,
9 DPM 006, just the third to the last page.

10 A Okay.

11 Q By the way --

12 A We've seen this one before.

13 Q Well, we have seen -- we have talked
14 about the top two notes, we haven't talked
15 about the handwritten note at the bottom.
16 Okay?

17 A Yes.

18 Q Have you ever seen that handwritten
19 note before?

20 A Yes.

21 Q All right. Did you take into
22 consideration, when forming your opinion in
23 this case, that Mr. Smith, at or around May 6,
24 2004 was concerned that something serious was
25 going on?

1 Q That's not my question, Professor
2 Trimble. Did you hear my question?

3 A Would you repeat the question.

4 Q Yes. My question is: There is
5 nothing in this note about taking Neurontin?

6 A That is correct.

7 Q And at this point in time, sometime
8 after May 6 and sometime before he dies, he is
9 reporting to the therapist, presumably on May
10 6, because that's the last time they saw him,
11 that he's concerned that something serious is
12 going on with his health; right?

13 A Something series is going on, I don't
14 think --

15 Q Well, what's his health problem,
16 Professor Trimble?

17 A Well, he says something serious is
18 going on.

19 Q Yes, he does.

20 A It does not say anything about
21 serious going on with his health.

22 Q Okay. All right, then. Can you
23 please turn to Exhibit number 18.

24 A Can I give you that one back.

25 Q Put it in the pile.

1 A It's a statement that he makes, which
2 I take into consideration as reflecting on his
3 mental state.

4 Q I'm not asking you --

5 A Not on his physical state.

6 Q I'm not asking you how you took it
7 into consideration, I'm asking you if you did.

8 A Yes.

9 Q Did you take that statement into
10 consideration when you formed your opinions in
11 this case?

12 A Yes.

13 Q And is that statement referenced
14 anywhere in your report?

15 A Not directly.

16 Q Not at all?

17 A Not at all, no. That's agreed.

18 Q In this May 4 note --

19 A May 4.

20 Q I'm sorry, May 5.

21 A The one at the bottom, yes, okay.
(Reviewing document.)

22 Q Before we get there, Professor
23 Trimble, let me ask you this:

24 If Mr. Smith was not concerned about his
25

1 physical health and his pain --
 2 A Uh hum.
 3 Q Why would he be telling the physical
 4 therapist that he was going to see a
 5 neurologist?
 6 MR. FINKELSTEIN: Objection.
 7 THE WITNESS: Oh, I think he was
 8 concerned to get further treatment. And
 9 as we know, he had made plans to see
 10 somebody else the day after he died.
 11 BY MS. MCGRODER:
 12 Q And that person was a neurologist;
 13 right?
 14 A That person was either -- well,
 15 neurologist or neurosurgeon, yes.
 16 Q Okay.
 17 A But I don't know exactly, yes.
 18 Q Okay. On the 5/5/04 note in
 19 Exhibit 18 the handwriting says "Patient
 20 called, complaint of pricking".
 21 Do you see that?
 22 A Yes.
 23 Q Slash "sticking feeling in buttock
 24 and legs. He states that he is taking Advil,
 25 Neurontin, Lortab with no relief"; right?

1 A Correct.
 2 Q So the conservative therapy he's
 3 getting, including his physical therapy, is not
 4 give him any relief; right?
 5 A That's correct. In this note.
 6 Q And the next line says: "He is
 7 having physical therapy at present, but that
 8 hasn't helped so far"; right?
 9 A Correct.
 10 Q So right now with conservative
 11 therapy, including medications and physical
 12 therapy, he is not getting any pain relief?
 13 A That is incorrect.
 14 Q The last recorded pain scale reported
 15 by Mr. Smith on May 6, 2004, states that he is
 16 rating his pain at a scale of 7-8, which is
 17 characterized as excruciating pain; correct?
 18 A That is correct.
 19 Q Is there any other pain scale after
 20 May 6 2004 in which Mr. Smith rates his pain?
 21 A Not that I know of.
 22 Q Okay. And then the next part of the
 23 May 5, 2004 note says "ESI --" we have talked
 24 about that; right?
 25 A Those are the, probably the facet,

1 F-A-C-E-T, injections.
 2 Q Well, in fact, they are epidural
 3 steroid injections; right?
 4 A Yes.
 5 Q That's what ESI stands for?
 6 A Yes.
 7 Q "ESI has been authorized by
 8 George --" something -- "but patient does not
 9 want to do that now"; right?
 10 A Correct.
 11 Q "Will call back if he decides to take
 12 advantage of ESI at later date".
 13 A Correct.
 14 Q Correct?
 15 A That's correct.
 16 Q There is one more line on this
 17 handwritten note. And you can see a trace of
 18 it at the bottom.
 19 A Yeah, I have never seen the --
 20 Q You've never seen it?
 21 A No.
 22 Q Nor I. Is it possible that Mr. Smith
 23 thought an epidural steroid injection would not
 24 help him?
 25 A It's possible.

1 Q Are these statements made on May 5,
 2 2004 similar to the statements he made in March
 3 of 2003 before he had lumbar surgery?
 4 A There is a similarity there, yes.
 5 Q Did you consider the fact that
 6 Mr. Smith called his physician on May 5, 2004
 7 to report that he was in pain, and that his
 8 medications, his physical therapy were not
 9 helping him when you formed your causation
 10 opinion in this case?
 11 A I did. Yes, I did.
 12 Q And if you turn to Exhibit 20.
 13 A (Referring to document.)
 14 Q The second to the last page.
 15 A (Referring to document.)
 16 Q These are the handwritten notes of
 17 Mr. Smith on his medical records.
 18 A Yes.
 19 Q Now, let me just ask you something
 20 timing wise. If you turn to the second to the
 21 last page.
 22 A Excuse me, I'm not --
 23 Q Go one more page.
 24 A This one here?
 25 Q There you go.

1 A Yes.
 2 Q May 5, 2004?
 3 A Yes.
 4 Q That's the same date as the record we
 5 just read --
 6 A That's correct.
 7 Q -- from Dr. McComb's office; correct?
 8 A That's correct.
 9 Q And it says "Called to Gloria at
 10 McCombs about pricking. She called back, they
 11 have nothing to offer but injections at White
 12 Bridge Road".
 13 A Correct.
 14 Q So Mr. Smith understood that the
 15 doctor's office had nothing to offer him except
 16 these steroid injections?
 17 A That's correct.
 18 Q And so this note is written on
 19 5/5/04, the same day he makes the phone call.
 20 And if you go to the preceding page, it's
 21 written after the March 31, 2004 note; correct?
 22 A That's correct.
 23 Q So would you assume from this that
 24 Mr. Smith obtained his medical record at some
 25 point after March 31, 2004?

1 A Yes.
 2 Q Okay. And then the last note he
 3 makes, is the same day he makes the phone call
 4 to McComb's office?
 5 A That's correct.
 6 Q And the McCombs record isn't included
 7 in this set in Exhibit 20; right?
 8 A That's correct.
 9 Q Did you consider when you formed your
 10 causation opinion in this case about Neurontin,
 11 that Mr. Smith learned on May 5, 2004 that
 12 McCombs office has nothing to offer him except
 13 epidural steroid injections?
 14 A I did.
 15 Q Do you believe, do you have the
 16 opinion today that Mr. Smith had severe chronic
 17 pain on May 5, 2004?
 18 A He was continuing to suffer from
 19 chronic pain, that's correct.
 20 Q Had Mr. Smith had epidural steroid
 21 injections in the past?
 22 A I don't believe so, but I may be
 23 incorrect. I don't believe he had.
 24 Q Did you go back to look to see
 25 whether the epidural steroid injections

1 Mr. Smith had in the past were helpful to him?
 2 MR. FINKELSTEIN: Objection.
 3 THE WITNESS: Being not orthopaedic
 4 and not even being certain of the exact
 5 meaning of those terms, I do not have a
 6 comment to make about his epidural steroid
 7 injections.
 8 BY MS. McGRODER:
 9 Q Well, you did not go and look up what
 10 an epidural steroid injection is before you
 11 gave your opinions in this case?
 12 A I know what they are, but I'm not an
 13 orthopaedic expert, and I have no idea of the
 14 expectations of those treatments, or, indeed,
 15 how they are given.
 16 Q Did you look through the medical
 17 records of Mr. Smith to determine whether he
 18 ever got any relief whatsoever from an epidural
 19 steroid injection?
 20 A I do not know if he ever had any
 21 relief from an ESI.
 22 Q And that was not important to your
 23 consideration of what the cause was of
 24 Mr. Smith's suicide?
 25 A No.

1 Q Again, at this point, in 2004, this
 2 can be differentiated from Mr. Smith's
 3 experience in 2003, because at this time
 4 there's nothing, Mr. Smith reports there is
 5 nothing that can help him; right?
 6 A He has made appointment to see
 7 another neurologist. Which he would not have
 8 done if he did not think there was another
 9 avenue to explore. So I don't agree there was
 10 nothing.
 11 Q Well, in Mr. Smith's perception on
 12 May 5, 2004, he says they have nothing to offer
 13 but injections; right?
 14 A That particular office had nothing to
 15 offer but injections.
 16 Q And he didn't want injections; right?
 17 A He did not want any further
 18 injections.
 19 Q And surgery is not an option for him
 20 at this point; correct?
 21 A That appears to be the case.
 22 Q Do you know who made the appointment
 23 for Mr. Smith with Dr. Chang?
 24 A No.
 25 Q Do you know whether Mr. Smith made

1 that appointment?

2 A I do not know who made the
3 appointment.

4 Q Do you know whether Mr. Smith wanted
5 to go to the appointment?

6 A I do not know whether Mr. Smith
7 wanted to go to the appointment.

8 Q Do you know who found the
9 neurosurgeon, Dr. Chang, for Mr. Smith to see?

10 A I think it was a family member, but I
11 do not know exactly who it was. In the
12 depositions that I read, I remember somebody
13 referring to it, but I don't know which family
14 member it was.

15 Q You were not aware, then, that it was
16 his daughter, Gail, who identified Dr. Chang as
17 a possible physician for Mr. Smith to see?

18 A I have just said it was within the
19 depositions that I read the other day, and it
20 was a family member, one of his daughters.
21 Maybe she had heard of this person from
22 somebody else. Does that sound right? It was
23 a family member anyway.

24 Q Do you know whether it was Gail who
25 made the appointment with Dr. Chang?

1 know, think back on Mr. Smith's medical
2 history, when he --

3 A Yes.

4 Q -- has full knee replacements, full
5 hip replacements, lumbar surgery, surgery on,
6 ah, a hernia repair, in Mr. Smith's medical
7 history, would you agree would me that the best
8 treatment Mr. Smith had and the ones he found
9 most effective were surgical?

10 MR. FINKELSTEIN: Objection.

11 THE WITNESS: He got relief from his
12 surgical interventions, that is correct.

13 BY MS. McGRODER:

14 Q Would you agree with me that
15 Mr. Smith felt hopeless after he learned that
16 surgery was not an option?

17 MR. FINKELSTEIN: Objection.

18 THE WITNESS: The term "hopeless" is
19 reflecting on Mr. Smith's mental state,
20 and it may well be that he had an
21 alteration of his mental state at this
22 time, and that helplessness was a part of
23 that.

24 BY MS. McGRODER:

25 Q Would you agree with me that

1 A No, I don't.

2 Q On May 5, 2004, when Mr. Smith makes
3 this handwritten notation, you agree that his
4 understanding was he was not a candidate for
5 surgery?

6 A That's correct.

7 Q In the past, at any time when
8 Mr. Smith had orthopaedic or neuropathic joint
9 and pain problems, did he ever find relief from
10 conservative therapy?

11 MR. FINKELSTEIN: Objection.

12 THE WITNESS: Well, I have just taken
13 you through some references where he was
14 getting relief from his physical therapy
15 in the two weeks prior to his death.

16 BY MS. McGRODER:

17 Q And those are the records that we
18 just talked about --

19 A Correct.

20 Q -- where Mr. Smith in the end said
21 you know what, these don't help me after I
22 leave here, and so I want to discontinue;
23 correct?

24 A That is correct.

25 Q Okay. And so now I'm talking, you

1 Mr. Smith believed or perceived his pain to be
2 severe and unrelenting between January of 2004
3 and May 13, 2004?

4 A I have emphasized that there were
5 fluctuations in the way that he perceived his
6 treatments, and also there were fluctuations in
7 the severity of his pain.

8 Q Would you agree with me that
9 Mr. Smith considered his pain as excruciating
10 on the last medical record in which his pain is
11 described?

12 A That is correct.

13 Q And the date of that record is May 4,
14 2004?

15 A That is correct.

16 Q Are you aware, Professor Trimble,
17 that the peer reviewed literature states that
18 the presence of one or more chronic pain
19 conditions is uniquely associated with suicide
20 ideation and suicide attempts?

21 MR. FINKELSTEIN: Objection.

22 THE WITNESS: I think yesterday I
23 have made it clear that pain, in and of
24 itself, cannot be considered a risk factor
25 for suicide.

<p style="text-align: right;">Page 497</p> <p>1 MS. McGRODER: I'm handing you now 2 what we have marked as Exhibit 25, which 3 is the suicide note. 4 (Exhibit 25 marked for 5 identification.) 6 THE WITNESS: Thank you. 7 BY MS. McGRODER: 8 Q Could you please read the suicide 9 note into the record. 10 A The first sentence has most of the 11 letters underlined. "Pain has taken over my 12 mind and body". 13 Q Can I stop you, I'm sorry, Professor 14 Trimble. Can you just hold that suicide letter 15 up, and show the jury. Just next to your face, 16 so they can see it, that's fine. 17 A (Witness complies.) 18 Q Thank you. And so that they can see 19 how that first sentence "Pain has taken over my 20 mind and body" is underlined. Okay, thank 21 you? 22 MR. FINKELSTEIN: Okay, you can read. 23 A "I need back surgery. Left and right 24 rotator cuffs, right bicep torn, back surgery 25 to correct pain in the legs. Forgive me, I</p>	<p style="text-align: right;">Page 499</p> <p>1 A It depends on what time you're used 2 to getting out of bed. But my understanding is 3 this family were early risers. 4 Q So Mr. Smith might have written this 5 note at 3:00 a.m.? 6 A He might have written it at 3:00 a.m. 7 Q Might he have written it at 2:00 8 a.m.? 9 A He says I have talked to God all 10 night. 11 Q So maybe 2:00 a.m. is too early? 12 A I would have thought so. 13 Q So Mr. Smith committed suicide at 14 approximately 5:00 a.m.; correct? 15 A Correct. 16 Q So it's possible that Mr. Smith, you 17 would agree with me, wrote this note as much as 18 two hours before he committed suicide? 19 A That's possible. 20 Q If he wrote the note two hours before 21 the suicide, does that suggest the presence of 22 impulsivity or absence of impulsivity? 23 A Presence, I would consider. 24 Q So an impulsive suicide can be 25 considered, in your opinion, for two hours</p>
<p style="text-align: right;">Page 498</p> <p>1 cannot go on like this. I cannot have my body, 2 the temple of the holy spirit, cut on any more. 3 I have talked to God all night, and he 4 understands". 5 Q Does the fact that Mr. Smith wrote a 6 suicide note suggest absence of impulsivity or 7 presence of impulsivity? 8 MR. FINKELSTEIN: Objection. 9 THE WITNESS: In terms of the timing 10 of it, it implies that he wrote this in 11 the morning of his suicide. It was done 12 immediately prior to his suicide. So that 13 would suggest the impulsivity of it all. 14 BY MS. McGRODER: 15 Q And how do you know that he did it 16 immediately prior to his suicide? 17 A Well, he had talked to God all night, 18 and his suicide was in the very early morning. 19 Q So is it possible he wrote the 20 suicide note at 4:00 a.m.? 21 A It's possible. 22 Q Is that early in the morning? 23 A It's early in the morning. 24 Q What about 3:00 a.m., is 3:00 a.m. 25 early in the morning?</p>	<p style="text-align: right;">Page 500</p> <p>1 prior to the suicide? 2 A Well, he -- that's a time scale you 3 have given me, two hours would be fine. To 4 assume that things were reaching a peak, and he 5 writes the suicide note, and -- 6 Q Well, how long -- I'm sorry. Were 7 you finished? 8 A Then he goes on and does it. 9 Q How long before a suicide -- 10 withdrawn. 11 If a person who is contemplating 12 suicide -- withdrawn. 13 With a person who is contemplating 14 suicide, how long before the suicide can the 15 impulse last, in your opinion? 16 MR. FINKELSTEIN: Objection. 17 THE WITNESS: I really don't know. 18 Impulsivity implies actions coming 19 out of the blue, but it doesn't 20 necessarily imply an immediate time. 21 Obviously, it implies some time 22 restriction, but the word "impulsive" 23 doesn't necessarily imply everything 24 happens instantaneously within 5 minutes. 25</p>